

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against: )**

**DAVID RAY ZACHARY, M.D. )**

**Physician's and Surgeon's )  
Certificate No. G 25398 )**

**Respondent )**

**Case No. 8002013001110**

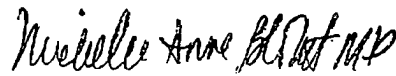
**DECISION AND ORDER**

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on August 18, 2017.**

**IT IS SO ORDERED: July 20, 2017.**

**MEDICAL BOARD OF CALIFORNIA**



**Michelle Anne Bholat, M.D., Chair  
Panel B**

1 XAVIER BECERRA  
Attorney General of California  
2 MATTHEW M. DAVIS  
Supervising Deputy Attorney General  
3 JASON J. AHN  
Deputy Attorney General  
4 State Bar No. 253172  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
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6 San Diego, CA 92186-5266  
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8 *Attorneys for Complainant*

9  
10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 8002013001110

14 **DAVID RAY ZACHARY, M.D.**  
15 **3553 Camino Mira Costa, Suite A**  
**San Clemente, CA 92672**

OAH No. 2017010003

16 **Physician's and Surgeon's Certificate**  
17 **No. G 25398**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

18 Respondent.

19  
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
24 of California (Board). She brought this action solely in her official capacity and is represented in  
25 this matter by Xavier Becerra, Attorney General of the State of California, by Jason J. Ahn,  
26 Deputy Attorney General.

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2. Respondent David Ray Zachary, M.D. (Respondent) is represented in this proceeding by attorney Adam Stull, whose address is: 23151 Moulton Pkwy, Laguna Hills, CA 92653.

## JURISDICTION

3. On or about August 9, 1973, the Board issued Physician's and Surgeon's Certificate No. G 25398 to David Ray Zachary, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 8002013001110, and will expire on April 30, 2018, unless renewed.

4. Accusation No. 8002013001110 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on or about December 5, 2016. Respondent timely filed his Notice of Defense contesting the Accusation and requested a hearing.

5. A copy of Accusation No. 8002013001110 is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 8002013001110. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,  
2 including copies of the signatures of the parties, may be used in lieu of original documents and  
3 signatures and, further, that such copies and signatures shall have the same force and effect as  
4 originals.

5 15. In consideration of the foregoing admissions and stipulations, the parties agree that  
6 the Board may, without further notice or formal proceeding, issue and enter the following  
7 Disciplinary Order:

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 25398 issued  
10 to Respondent David Ray Zachary, M.D. is revoked. However, the revocation is stayed and  
11 Respondent is placed on probation for seven (7) years on the following terms and conditions.

12 1. STANDARD STAY ORDER. However, revocation is stayed and Respondent is  
13 placed on probation for seven (7) years upon the following terms and conditions.

14 2. COMMUNITY SERVICE - FREE SERVICES. Within 60 calendar days of the  
15 effective date of this Decision, Respondent shall submit to the Board or its designee for prior  
16 approval a community service plan in which Respondent shall within the first 2 years of  
17 probation, provide 400 hours of free services (e.g., medical or nonmedical) to a community or  
18 non-profit organization. If the term of probation is designated for 2 years or less, the community  
19 service hours must be completed not later than 6 months prior to the completion of probation.

20 Prior to engaging in any community service Respondent shall provide a true copy of the  
21 Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief  
22 executive officer at every community or non-profit organization where Respondent provides  
23 community service and shall submit proof of compliance to the Board or its designee within 15  
24 calendar days. This condition shall also apply to any change(s) in community service.

25 Community service performed prior to the effective date of the Decision shall not be  
26 accepted in fulfillment of this condition.

27 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of  
28 the effective date of this Decision, Respondent shall enroll in a professionalism program, that

1 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.  
2 Respondent shall participate in and successfully complete that program. Respondent shall  
3 provide any information and documents that the program may deem pertinent. Respondent shall  
4 successfully complete the classroom component of the program not later than six (6) months after  
5 Respondent's initial enrollment, and the longitudinal component of the program not later than the  
6 time specified by the program, but no later than one (1) year after attending the classroom  
7 component. The professionalism program shall be at Respondent's expense and shall be in  
8 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

9 A professionalism program taken after the acts that gave rise to the charges in the  
10 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
11 or its designee, be accepted towards the fulfillment of this condition if the program would have  
12 been approved by the Board or its designee had the program been taken after the effective date of  
13 this Decision.

14 Respondent shall submit a certification of successful completion to the Board or its  
15 designee not later than 15 calendar days after successfully completing the program or not later  
16 than 15 calendar days after the effective date of the Decision, whichever is later.

17 4. MONITORING - BILLING. Within 30 calendar days of the effective date of this  
18 Decision, Respondent shall submit to the Board or its designee for prior approval as a billing  
19 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose  
20 licenses are valid and in good standing, and who are preferably American Board of Medical  
21 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal  
22 relationship with Respondent, or other relationship that could reasonably be expected to  
23 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
24 but not limited to, any form of bartering, shall be in Respondent's field of practice, and must  
25 agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

26 The Board or its designee shall provide the approved monitor with copies of the Decision(s)  
27 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the  
28 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed

1 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role  
2 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees  
3 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
4 signed statement for approval by the Board or its designee.

5 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
6 probation, Respondent's billing shall be monitored by the approved monitor. Respondent shall  
7 make all records available for immediate inspection and copying on the premises by the monitor  
8 at all times during business hours and shall retain the records for the entire term of probation.

9 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective  
10 date of this Decision, Respondent shall receive a notification from the Board or its designee to  
11 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
12 shall cease the practice of medicine until a monitor is approved to provide monitoring  
13 responsibility.

14 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
15 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
16 are within the standards of practice of billing, and whether Respondent is practicing medicine  
17 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure  
18 that the monitor submits the quarterly written reports to the Board or its designee within 10  
19 calendar days after the end of the preceding quarter.

20 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
21 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
22 name and qualifications of a replacement monitor who will be assuming that responsibility within  
23 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60  
24 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
25 notification from the Board or its designee to cease the practice of medicine within three (3)  
26 calendar days after being so notified Respondent shall cease the practice of medicine until a  
27 replacement monitor is approved and assumes monitoring responsibility.

28 In lieu of a monitor, Respondent may participate in a professional enhancement program

1 approved in advance by the Board or its designee, that includes, at minimum, quarterly chart  
2 review, semi-annual practice assessment, and semi-annual review of professional growth and  
3 education. Respondent shall participate in the professional enhancement program at Respondent's  
4 expense during the term of probation.

5 5. PROHIBITED PRACTICE. During probation, Respondent is prohibited from hiring  
6 and/or working with and/or associating with any aestheticians. After the effective date of this  
7 Decision, all patients being treated by the Respondent shall be notified that the Respondent is  
8 prohibited from hiring and/or working with/ and or associating with any aestheticians. Any new  
9 patients must be provided this notification at the time of their initial appointment.

10 Respondent shall maintain a log of all patients to whom the required oral notification was  
11 made. The log shall contain the: 1) patient's name, address and phone number; patient's medical  
12 record number, if available; 3) the full name of the person making the notification; 4) the date the  
13 notification was made; and 5) a description of the notification given. Respondent shall keep this  
14 log in a separate file or ledger, in chronological order, shall make the log available for immediate  
15 inspection and copying on the premises at all times during business hours by the Board or its  
16 designee, and shall retain the log for the entire term of probation.

17 6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
18 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
19 Chief Executive Officer at every hospital where privileges or membership are extended to  
20 Respondent, at any other facility where Respondent engages in the practice of medicine,  
21 including all physician and locum tenens registries or other similar agencies, and to the Chief  
22 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
23 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
24 calendar days.

25 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

26 7. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED  
27 PRACTICE NURSES. During probation, Respondent is prohibited from supervising  
28 physician assistants and advanced practice nurses.



1           8.   OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
2 governing the practice of medicine in California and remain in full compliance with any court  
3 ordered criminal probation, payments, and other orders.

4           9.   QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
5 under penalty of perjury on forms provided by the Board, stating whether there has been  
6 compliance with all the conditions of probation.

7           Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
8 of the preceding quarter.

9           10.   GENERAL PROBATION REQUIREMENTS.

10          Compliance with Probation Unit

11          Respondent shall comply with the Board's probation unit and all terms and conditions of  
12 this Decision.

13          Address Changes

14          Respondent shall, at all times, keep the Board informed of Respondent's business and  
15 residence addresses, email address (if available), and telephone number. Changes of such  
16 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
17 circumstances shall a post office box serve as an address of record, except as allowed by Business  
18 and Professions Code section 2021(b).

19          Place of Practice

20          Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
21 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
22 facility.

23          License Renewal

24          Respondent shall maintain a current and renewed California physician's and surgeon's  
25 license.

26          Travel or Residence Outside California

27          Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
28 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty

1 (30) calendar days.

2 In the event Respondent should leave the State of California to reside or to practice  
3 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
4 departure and return.

5 11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
6 available in person upon request for interviews either at Respondent's place of business or at the  
7 probation unit office, with or without prior notice throughout the term of probation.

8 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
9 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
10 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
11 defined as any period of time Respondent is not practicing medicine in California as defined in  
12 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month  
13 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All  
14 time spent in an intensive training program which has been approved by the Board or its designee  
15 shall not be considered non-practice. Practicing medicine in another state of the United States or  
16 Federal jurisdiction while on probation with the medical licensing authority of that state or  
17 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall  
18 not be considered as a period of non-practice.

19 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
20 months, Respondent shall successfully complete a clinical training program that meets the criteria  
21 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and  
22 Disciplinary Guidelines" prior to resuming the practice of medicine.

23 Respondent's period of non-practice while on probation shall not exceed two (2) years.

24 Periods of non-practice will not apply to the reduction of the probationary term.

25 Periods of non-practice will relieve Respondent of the responsibility to comply with the  
26 probationary terms and conditions with the exception of this condition and the following terms  
27 and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly  
28 Declarations.

1        13. COMPLETION OF PROBATION. Respondent shall comply with all financial  
2 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
3 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
4 be fully restored.

5        14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
6 of probation is a violation of probation. If Respondent violates probation in any respect, the  
7 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
8 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
9 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
10 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
11 the matter is final.

12        15. LICENSE SURRENDER. Following the effective date of this Decision, if  
13 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
14 the terms and conditions of probation, Respondent may request to surrender his or her license.  
15 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
16 determining whether or not to grant the request, or to take any other action deemed appropriate  
17 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
18 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
19 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
20 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
21 application shall be treated as a petition for reinstatement of a revoked certificate.

22        16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
23 with probation monitoring each and every year of probation, as designated by the Board, which  
24 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
25 California and delivered to the Board or its designee no later than January 31 of each calendar  
26 year.

27        ///

28        ///

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Adam Stull. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

5/26/2017

David Ray Zachary, M.D.  
DAVID RAY ZACHARY, M.D.  
Respondent

I have read and fully discussed with Respondent David Ray Zachary, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

5-26-17

Adam Stull  
ADAM STULL  
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated:

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
MATTHEW M. DAVIS  
Supervising Deputy Attorney General

JASON J. AHN  
Deputy Attorney General  
Attorneys for Complainant

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Adam Stull. I fully understand the stipulation and the effect it will  
4 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and  
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
6 Decision and Order of the Medical Board of California.

7  
8 DATED: \_\_\_\_\_

9 DAVID RAY ZACHARY, M.D.  
10 *Respondent*

11 I have read and fully discussed with Respondent David Ray Zachary, M.D. the terms and  
12 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
13 I approve its form and content.

14 DATED: \_\_\_\_\_

15 ADAM STULL  
16 *Attorney for Respondent*


17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
19 submitted for consideration by the Medical Board of California.

20 Dated: May 30, 2017

Respectfully submitted,

21 XAVIER BECERRA  
22 Attorney General of California  
23 MATTHEW M. DAVIS  
24 Supervising Deputy Attorney General

25   
26 JASON J. AHN  
27 Deputy Attorney General  
28 *Attorneys for Complainant*

**Exhibit A**

**Accusation No. 8002013001110**

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Dec. 5 20 16  
BY R. Firdaus ANALYST

KAMALA D. HARRIS  
Attorney General of California  
MATTHEW M. DAVIS  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
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In the Matter of the Accusation Against:

Case No. 8002013001110

David Ray Zachary, M.D.  
3553 Camino Mira Costa, Suite A  
San Clemente, CA 92672

ACCUSATION

Physician's and Surgeon's Certificate  
No. G25398

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about August 9, 1973, the Medical Board issued Physician's and Surgeon's Certificate Number G25398 to David Ray Zachary, M.D. (respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein, and will expire on April 30, 2018, unless renewed.

## JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded, or have such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct.<sup>1</sup> In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"..."

6. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality<sup>2</sup> of the pendency of an action against

<sup>1</sup> Unprofessional conduct under California Business and Professions Code section 2234 is conduct which breaches the rules of ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

<sup>2</sup> "Division of Medical Quality" shall be deemed to refer to the Medical Board of California.



1 a licensee charging a felony or misdemeanor immediately upon obtaining  
2 information that the defendant is a licensee. The notice shall identify the licensee  
3 and describe the crimes charged and the facts alleged. The prosecuting agency  
4 shall also notify the clerk of the court in which the action is pending that the  
5 defendant is a licensee, and the clerk shall record prominently in the file that the  
6 defendant holds a license as a physician and surgeon.

7 “(c) The clerk of the court in which a licensee is convicted of a crime  
8 shall, within 48 hours after the conviction, transmit a certified copy of the record  
9 of conviction to the board. The division may inquire into the circumstances  
10 surrounding the commission of a crime in order to fix the degree of discipline or  
11 to determine if the conviction is of an offense substantially related to the  
12 qualifications, functions, or duties of a physician and surgeon.

13 “(d) A plea or verdict of guilty or a conviction after a plea of nolo  
14 contendere is deemed to be a conviction within the meaning of this section and  
15 Section 2236.1. The record of conviction shall be conclusive evidence of the fact  
16 that the conviction occurred.”

17 7. California Code of Regulations, title 16, section 1360, states:

18 “For the purposes of denial, suspension or revocation of a license,  
19 certificate or permit pursuant to Division 1.5 (commencing with Section 475) of  
20 the code, a crime or act shall be considered to be substantially related to the  
21 qualifications, functions or duties of a person holding a license, certificate or  
22 permit under the Medical Practice Act if to a substantial degree it evidences  
23 present or potential unfitness of a person holding a license, certificate or permit to  
24 perform the functions authorized by the license, certificate or permit in a manner  
25 consistent with the public health, safety or welfare. Such crimes or acts shall  
26 include but not be limited to the following: Violating or attempting to violate,  
27 directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
28 violate any provision of the Medical Practice Act.”

**FIRST CAUSE FOR DISCIPLINE**

**(Conviction of a Crime Substantially related to the Qualifications, Functions, or  
Duties of a Physician and Surgeon)**

8. Respondent has subjected his Physician's and Surgeon's Certificate No. G25398 to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the Code, in that he has been convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows:

9. On or about December 6, 2013, a criminal complaint was filed against respondent in the case entitled *The People of the State of California v. David Ray Zachary et al.*, Superior Court of California, County of Orange, Case No. 13CF3822, charging respondent with the following counts:

A. Count 1-6

On or about and between January 1, 2004 and December 31, 2009, in violation of Section 550(a)(6) of the Penal Code (MEDICAL INSURANCE FRAUD), a FELONY, respondent, Eva Marie Gentile, Ronald Keith McGee, John Frederick Gentile, and Amirshahin Mandegari, with the intent to defraud, did knowingly and unlawfully make and cause to be made a false and fraudulent claim to various insurance companies for payment of a health care benefit in an amount exceeding four hundred dollars (\$400), and did aid and abet, solicit, and conspire with another to do the same.

B. Count 7

On or about and between January 1, 2004 and May 26, 2011, in violation of Section 182(a)(1) of the Penal Code (CONSPIRACY TO COMMIT A CRIME), a FELONY, respondent, Eva Marie Gentile, Ronald Keith McGee, John Frederick Gentile, and Amirshahin Mandegari did unlawfully conspire together and with another person, whose identity is unknown, to commit the crime of CONSPIRING IN, AIDING AND ABETTING THE UNAUTHORIZED PRACTICE OF MEDICINE, in violation of Section 2052(b) of the Business and Professions Code.

C. Count 8

On or about September 1, 2015, Count 8 was added by interlineation, which stated:

On or about and between January 1, 2004 and December 31, 2009, in violation of Section 2052(b) of the Business and Professions Code (AIDING AND ABETTING UNAUTHORIZED PRACTICE OF MEDICINE), a MISDEMEANOR, respondent, willfully and unlawfully conspired with Eva Gentile, John Gentile, and Ronald McGee to aid and abet Amirshahin Mandegari in the unlawful practice of medicine.

D. Special Allegations

a) It is further alleged pursuant to Penal Code section 186.11(a)(1)/(3) (AGGRAVATED WHITE COLLAR CRIME – OVER \$100,000), that as to counts 1, 2, 3, 4, 5, and 6, respondent, Eva Marie Gentile, Ronald Keith McGee, John Frederick, and Amirshahin Mandegari engaged in a pattern of related fraudulent felony conduct involving the taking of more than one hundred thousand dollars (\$100,000) but less than five hundred thousand dollars (\$500,000).

b) As to Count(s) 1, 2, 3, 4, 5, and 6, it is further alleged pursuant to Penal Code section 12022.6(a)(1) (PROPERTY DAMAGE / LOSS OVER \$65,000), that respondent, Eva Marie Gentile, Ronald Keith McGee, John Frederick Gentile, and Amirshahin Mandegari intentionally took, damaged, and destroyed property valued in excess of sixty-five thousand dollars (\$65,000) during the commission and attempted commission of the above offense;

E. On or about September 1, 2015, respondent pled guilty to count 8. The rest of the counts and special allegations were dismissed by the People of the State of California.

F. On or about September 1, 2015, respondent was sentenced to, among other things, 80 hours of voluntary free medical care, total restitution of \$33,433.43 to the victims, including on dismissed counts, three (3) years of probation, and various

1 fines and fees.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Violation of the Medical Practice Act)**

4 10. Respondent has further subjected his Physician's and Surgeon's Certificate No.  
5 G25398 to disciplinary action under sections 2227 and 2234, as defined by section 2234,  
6 subdivision (a), of the Code, in that he has violated or attempted to violate, directly or indirectly,  
7 or assisted in or abetted the violation of, or conspired to violate a provision of the Medical  
8 Practice Act, as more particularly alleged hereinafter:

9 (a) Paragraphs 8 through 9, above, are hereby incorporated by reference and  
10 realleged as if fully set forth herein.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(General Unprofessional Conduct)**

13 11. Respondent has further subjected his Physician's and Surgeon's Certificate No.  
14 G25398 to disciplinary action under sections 2227 and 2234, as defined by section 2234 of the  
15 Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical  
16 profession, or conduct which is unbecoming to a member in good standing of the medical  
17 profession and which demonstrates an unfitness to practice medicine, as more particularly alleged  
18 hereinafter:

19 (a) Paragraphs 8 through 10, above, are hereby incorporated by reference and  
20 realleged as if fully set forth herein.

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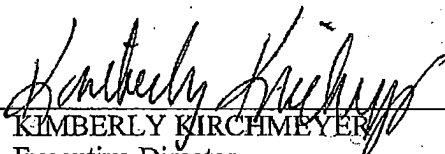
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G25398, issued to David Ray Zachary, M.D.
2. Revoking, suspending or denying approval of David Ray Zachary, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering David Ray Zachary, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: December 5, 2016

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*